

1 already the termination claim. In addition, the settlement
2 allows the estate the opportunity to recover up to
3 approximately seventy-two million dollars, as Mr. Miller
4 described. Thus, the potential benefit to the estate is in
5 excess of a half a billion dollars.

6 The committee intervened in the Libra litigation last
7 year, participated in the summary judgment proceedings. And
8 the committee's counsel, financial advisors and members have
9 been involved in lengthy negotiation with the debtors and
10 Societe Generale. The product of this experience has resulted
11 in a settlement and the committee believes that the settlement
12 is in the best interest of the estates and general unsecured
13 creditors.

14 Unless Your Honor has any questions, that's the extent
15 of my presentation (indiscernible).

16 THE COURT: Thank you.

17 MR. WINSTON: Thank you.

18 MR. WOLOWITZ: Good morning, Your Honor. Steven
19 Wolowitz for Societe Generale. Your Honor, SG supports and
20 agrees to the changes to the settlement agreement and the
21 proposed order and the conforming changes to the exhibits that
22 the debtors and the objecting parties have agreed to. That's
23 the only statement for the record.

24 THE COURT: It's a very brief statement. I accept
25 that as a model for others to follow.

1 MR. RALPH MILLER: Your Honor, the statement of Mr.
2 Wolowitz reminds me that we do need to clarify for the record
3 that in addition to some changes in the order, there have been
4 changes agreed to in the settlement agreement and some of the
5 implementing documents. And those will also be reflected in
6 the final to be given to the Court this afternoon.

7 THE COURT: Okay. I have a couple of questions, Mr.
8 Miller. And, really, it doesn't go to approving the settlement
9 which is now a consensual settlement that clearly offers
10 substantial benefits to the estate. So as to that, there's no
11 issue.

12 I have a pure question about case administration. I
13 have currently pending cross-motions for summary judgment that
14 I have happily disregarded for the past, I think, nine months.
15 And I may be wrong as to the exact time period. But I was
16 first notified by counsel quite a while ago that because
17 settlement discussions were proceeding and the parties were
18 making significant progress that I might put my pencil down in
19 respect of the pending summary judgment decision. I now see
20 that the issue of effective termination remains an open issue
21 or at least as it relates to certain aspects of the settlement.
22 To what extent, if at all -- and I think the answer is no but
23 if the answer is yes, I need to know. To what extent, if at
24 all, do the parties expect that the termination issue will be
25 resolved in the context of pending motions for summary

1 judgment? I think the answer is it won't be. But if the
2 answer is it will, what, if anything, more is expected of the
3 Court other than simply rendering a decision?

4 MR. RALPH MILLER: Your Honor, first of all, nothing
5 more is expected of the Court on those pending motions at this
6 time. Let me explain very briefly how the debtors --

7 THE COURT: I think the "at this time" clause is a
8 problem.

9 MR. RALPH MILLER: Well, let me explain how the
10 debtors see this moving forward. The debtors are always
11 anxious to try to work by cooperation and agreement if they
12 possibly can. After this resolution, the debtors hope that we
13 will be able to develop a dialogue with the other parties which
14 includes the trustees and the noteholders or their
15 representatives. There is some difficulty, Your Honor, in
16 these transactions actually finding all the noteholders and
17 determining who can speak for them. If we're able to achieve
18 that, our goal obviously would be to see if there's some sort
19 of consensual resolution which would mean that there will be
20 nothing the Court would ever have to decide. If there's not a
21 consensual resolution, the termination issue is somewhat
22 different between Libra and MKP Vela. So if Libra were
23 resolved by agreement then these summary judgment motions would
24 clearly become essentially moot. If Vela has to be heard,
25 there will need to be new -- probably discovery and some

1 motions because there is a discovery issue in Vela that may
2 have to be resolved or may not. It might be resolved by
3 agreement.

4 There is a remote possibility which I believe is
5 unlikely that the other parties might agree to go ahead and
6 basically adopt by reference the pleadings that were filed by
7 SG and ask the Court to reactivate the pending motions for
8 summary judgment. I think in that case, we would treat them as
9 a new filing for summary judgment but we probably would prefer
10 not to have all the papers discarded in the unlikely event that
11 that happens. If that occurred, essentially the same issues
12 that have already argued and presented would simply be
13 presented to the Court on that issue. But that would require
14 agreement of other parties and they would have to be convinced
15 that the arguments they want to make are arguments that have
16 already been made by SG. So in that regard, I think our
17 request would be please don't discard your files. Please do
18 treat these motions as inoperative at this point and we --

19 THE COURT: Did you say inoperative?

20 MR. RALPH MILLER: Inoperative, yes, Your Honor. And
21 if you wish to remove them in some administrative way from the
22 docket, that's fine. But in full disclosure, we really believe
23 those issues were well framed. The debtors feel strongly that
24 we were entitled to summary judgment. We feel that still, like
25 we're not able to settle, we're going to be brining that issue

1 back to the Court in very much the same form that you've
2 already seen. And then, of course, we would not like for the
3 Court to have to reinvent any wheels if that issue does not get
4 resolved by agreement.

5 THE COURT: For docket control purposes, I rather wish
6 that we could come up with a way for this to be removed from
7 the docket without prejudice so that it could be restarted at
8 some point in the future only because I have to track pending
9 matters that aren't resolved.

10 MR. RALPH MILLER: Your Honor, I think we will need to
11 confer briefly with all the parties who have interest in the
12 (indiscernible). Certainly, that makes sense to remove it for
13 administrative purposes so it's no longer being tracked. And
14 it's certainly not in our view anything that would be
15 appropriate to be decided until the other parties who may want
16 to weigh in get a chance to decide what position they want to
17 take.

18 THE COURT: Okay. My next question was to the Vela
19 matter which I didn't learn about until the summary judgment
20 motion was filed. I may have learned about Vela in the context
21 of Libra but I don't remember knowing about it. And what's not
22 clear to me is what if the litigation with respect to Vela
23 which as been described weakly in the moving papers will be
24 brought or is that simply a reservation of rights to bring that
25 litigation?

1 MR. RALPH MILLER: Your Honor, there's a tolling
2 agreement involving Vela that tolls avoidance actions, ipso
3 facto claims and also would toll this termination claim. And
4 we actually believe the termination claim doesn't need to be
5 tolled because there's no statute of limitations issue in the
6 contract claim.

7 So whether the Vela case even needs to be brought
8 would be a result of these discussions we hope to be able to
9 have. I do understand that the Vela noteholders are somewhat
10 more available and accessible than the Libra noteholders have
11 been. We understand that, we don't have details, that more of
12 them have been in contact with the trustee. So we're somewhat
13 optimistic that we may be able to move more rapidly toward a
14 consensual agreement if that's possible in Vela. And, of
15 course, there is a remote possibility, Your Honor, that the
16 parties might agree to an alternative dispute resolution
17 proceeding of some kind. We don't think that's necessary, of
18 course, but that is another option.

19 While all those are proceeding, since there is a
20 tolling agreement, our intention would be not to put another
21 case on the Court's docket. And if a case did come onto the
22 Court's docket, it would be focused on the issues that the
23 parties felt needed to be brought to the Court for decision.

24 THE COURT: Okay. Now, with some trepidation, I'm
25 going to mention something because it goes to docket control.

1 When I learned that there was a settlement that was being
2 documented in the context of the Libra case, I withheld the
3 issuance of a certain decision in Harrier and Ballyrock. That
4 decision is, for all practical purposes, ready to issue. The
5 principle reason that I withheld issuing my decision is that I
6 did not want any aspect of that decision to affect what I
7 understood to be sensitive ongoing negotiations in Libra. I
8 intend to issue that decision. It's just a question of when.

9 MR. RALPH MILLER: Well, Your Honor, I'm well aware of
10 those overlapping issues. The same sensitive issues are now
11 part of the negotiations with remaining parties in these
12 transactions. And I think sometimes uncertainty is beneficial
13 in negotiations. Sometimes it's not. So obviously, we
14 don't -- well, it's the Court's decision on what you want to
15 do. But in our view, the same sensitive issues are still being
16 discussed. And the Court may recall -- and this is sort of a
17 technical issue -- that the senior swap was written so that it
18 did not cover termination payments. The SG settlement
19 essentially reflects only the issues related to the inadequacy
20 of the termination mechanism. It does not reflect one way or
21 another the value of what's called the priority claims. And
22 those claims involve the ipso facto doctrine the Court has
23 already dealt with in part in the NY Sapphire decision of
24 January 25th. They also involve certain avoidance actions that
25 have recently been filed that are essentially alternative

1 rights to recovery in the event that those are interpreted in
2 certain ways. The Ballyrock and Harrier decisions have impact
3 on some of those same issues particularly under New York law.
4 And for that reason, this settlement really leaves all of those
5 issues on the table and open and for discussion. And this
6 settlement does not reflect any valuation or interaction with
7 those issues one way or another. So the uncertainty remains
8 and our hope would be that we can have some discussions in the
9 present environment and try to see what comes from that.

10 THE COURT: Well, to the extent uncertainty is
11 helpful, I'm going to keep things uncertain for a while longer
12 but not much longer. And you have sixty days of uncertainty.
13 I hope you can use it wisely.

14 MR. RALPH MILLER: Thank you, Your Honor. Mr.
15 Schaffer, I think, wanted to --

16 MR. WOLOWITZ: I'm sorry. Could I just -- before Mr.
17 Schaffer, Your Honor -- Steve Wolowitz for SG.

18 THE COURT: Yes, Mr. Wolowitz?

19 MR. WOLOWITZ: Just --

20 THE COURT: I just complimented you on brevity.

21 MR. WOLOWITZ: I hope I'll be equally brief this time.
22 One slight modification to what Mr. Miller said with respect to
23 the pending Libra adversary proceeding. SG, of course, if the
24 settlement agreement is approved, would be dismissed from that
25 action.

1 THE COURT: Yes, of course.

2 MR. SCHAFFER: Hopefully just as brief.

3 THE COURT: Mr. Schaffer?

4 MR. SCHAFFER: Your Honor, Eric Schaffer for the Bank
5 of New York Mellon Trust Company, trustee on the MKP Vela. In
6 our limited objection, we expressed our concerns that the
7 settlement not bind parties in any promised but not yet issued
8 future litigation. The amendment to the order as has been
9 presented to the Court addresses our concern.

10 THE COURT: Fine. I'm pleased to hear that. Is there
11 anyone else who wishes to be heard at this point?

12 MR. JOHNSON: Yes, Your Honor. Good morning, Your
13 Honor. Michael Johnson from Alston & Bird on behalf of Bank of
14 America as the Libra trustee. Your Honor, I just wanted to
15 address briefly some of the issues that have just been
16 discussed the pending motions in respect of termination of the
17 Libra swap. Just to clarify something that Mr. Miller said, my
18 client and the Libra CDO are actually parties to the pending
19 transaction. And I do not have any authority from my client as
20 of today here and now to stand down on those motions. In light
21 of the concerns that Your Honor has expressed about the Court's
22 docket and the statements Mr. Miller just made about a desire
23 to have negotiations to see whether those motions can be
24 resolved, I'm prepared to go back to my client and talk about
25 those things. But I just wanted to clarify today for the

1 record, Your Honor, that right here right now I don't have any
2 authority to consent to withdrawing those motions on behalf of
3 my clients even on a without prejudice basis. But again, I
4 will go back and talk to my clients about that and talk to Mr.
5 Miller about it as well.

6 THE COURT: Okay. Thank you for that. I'll ask one
7 more time. Is there anyone else who wishes to be heard on this
8 at this point? Apparently not.

9 The motion for approval of the settlement is granted
10 in accordance with the form of order that has been handed
11 portions of which are handwritten and the handwritten portions
12 have been read into the record by Mr. Miller. I'm pleased that
13 the parties have been able to reach what appears to be a very
14 favorable settlement from the estates' perspective. One of the
15 aspects of the Libra case, and I gather Vela is comparable,
16 that may not be apparent from the relevant presentation today
17 is that the transactions that underlie the settlement are of a
18 rather complexity that is beyond that of (indiscernible). It's
19 extraordinarily very hard to understand third party track. And
20 the arguments made by both LBSF and SG in connection with the
21 summary judgment motion were extraordinarily well presented.
22 And the issues are issues of first impression and hopefully the
23 parties will agree to settlements in the other matters
24 including Vela. It is apparent to me as noted in the motion
25 papers that any resolution of this in Court is one that will

1 not stop here and it will involve levels of appeal and expense
2 and ongoing risk. And so for that reason, I am delighted to
3 approve the settlement and recognize that it represents an
4 extraordinary effort by the lawyers and other advisors who have
5 worked to develop I think a very sound resolution to this
6 ongoing dispute. And for that reason, I approve it.

7 MR. RALPH MILLER: Thank you, Judge.

8 THE COURT: Mr. Miller?

9 MR. HARVEY MILLER: Harvey Miller again.

10 THE COURT: Oh. If anyone wishes to be excused in
11 connection with this matter or other matters that we've heard,
12 you can leave.

13 (Pause)

14 MR. HARVEY MILLER: I was about to say off the record,
15 Your Honor. It's not often I can follow my father to
16 (indiscernible).

17 THE COURT: Okay. I'm the only one that laughed,
18 though.

19 (Pause)

20 MR. HARVEY MILLER: If Your Honor please, this is item
21 7 on the agenda today. It's the debtors' motion pursuant to
22 Section 105(a) of the Bankruptcy Code to stay prosecution of
23 avoidance actions as proposed in the motion and to extend the
24 time to serve summonses and complaints and to file the
25 avoidance actions.

1 Your Honor, in the context of the size and complexity
2 of the bankruptcy cases in the Lehman enterprise and the
3 thousands of transactions that have to be analyzed amidst the
4 many other complex and difficult tasks that the debtors have
5 had to undertake, the statute of limitations prescribed by
6 Section 546(a) do not present an adequate period of time to do
7 all the diligence and investigation that would normally occur
8 in connection with the prosecution of avoidance actions under
9 the Bankruptcy Code or otherwise.

10 As a result, the debtors worked with the -- closely
11 with the creditors' committee in an effort to preserve every
12 potentially collectible asset of the debtors and not to incur
13 unnecessary expenses of litigation and therefore undertook a
14 major effort to persuade potential defendants to enter into
15 agreements tolling the application of the statute of
16 limitations. That effort was largely successful and there have
17 been over 230 tolling agreements that have been agreed to and
18 executed covering hundreds of potential defendants.

19 However, for lack of time, logistical problems and, in
20 some cases, positions asserted by potential defendants, the
21 debtors were compelled to commence approximately fifty-eight
22 adversary proceedings prior to the expiration of the statute of
23 limitations. These adversary proceedings were commenced to
24 assure that no potential real claim would be lost because of
25 the expiration of the statute of limitations.

1 Diligence as to all potential claims is ongoing. It
2 is the debtors' intention to the extent feasible to avoid
3 substantial litigation with the attending costs and
4 expenditures of time that would be involved in such litigation
5 by seeking to resolve claims in a more expeditious manner and
6 thereby promote judicial economy.

7 The requested stay would be in the best interest of
8 all parties and the administration of the cases. Indeed, after
9 further diligence and where appropriate, Your Honor, and
10 warranted, the debtors may discontinue the assertion of
11 avoidance claims. To effectuate that intention and consistent
12 with the precedent in this circuit and elsewhere, the debtors
13 have made the instant motion. The debtors propose that the
14 stay of prosecution be for an indefinite period but subject to
15 the right of any avoidance action defendant for cause shown to
16 move before the Court to vacate or modify the stay. The
17 debtors would also have the right to terminate the stay should
18 they deem it appropriate to move forward with the prosecution
19 of any avoidance action.

20 In addition, as to the five avoidance actions, the
21 debtors request an extension of time within which to complete
22 service of process upon the main defendants pursuant to Rule
23 4 (m) of the Federal Rules of Civil Procedure as incorporated
24 into the bankruptcy rules. The debtors request that a sixty
25 day extension beyond the normal 120-day service period

1 specified in Rule 4(m). A stay of time to complete service is
2 necessary as there are a number of transferees whose identities
3 are not readily available to the debtors. They are noteholders
4 who received distributions made by the debtor to their
5 indenture trustee that were thereafter distributed to the
6 individual noteholders. The debtors need additional time and
7 perhaps third party discovery to identify such noteholders and
8 to complete service.

9 In (indiscernible), Your Honor, this is a simple
10 motion. It seeks a practical solution to a situation which is
11 inherent in cases of size and complexity of these cases. Many
12 of the potential defendants agreed by entering into the tolling
13 agreements that have been executed and agreed to.

14 In connection with the fifty-eight adversary
15 proceedings commenced, only eight of the main defendants have
16 objected to the motion. The remaining defendants did not
17 object. And of the eight objections, Your Honor, two are
18 limited objections. The objections of Deutsche Bank and
19 Canadian Imperial Bank of Commerce are limited objections
20 seeking a specific limitation on the stay in number of days.

21 The granting of the stay is provident and will result
22 in no prejudice to any of the adversary parties. All rights
23 are reserved. And a lapse of any time caused by the stay will
24 not be used to the disadvantage of any avoidance action
25 defendants. As noted, any avoidance action defendant may seek

1 to modify or vacate the stay for cause shown. There is no
2 intention to prejudice any party but rather provide the
3 opportunity to promote judicial economy and, at the same time,
4 explore more expedient means to resolve these cases.

5 There can be no dispute, Your Honor, that the granting
6 of the motion is within the sound discretion of the Court. The
7 Court has the inherent power to issue such a stay and we have
8 cited the authorities in our submission papers. And as Your
9 Honor is undoubtedly aware, in cases before the bankruptcy
10 court in this district, in the Delphi Corporation case and in
11 the Enron case, Judges Drain and Gonzales did extend the
12 prosecution -- did stay the prosecution of cases. In the
13 Delphi case, there were more than 780 cases which were
14 stayed -- prosecution was stayed for over seventeen months and,
15 similarly, for extended periods in the Enron case.

16 Debtors filed a reply to the objections, Your Honor, a
17 rather extensive reply which dealt with the general contentions
18 of the objectors and some specific contentions of the
19 objectors. I can go through that but I imagine Your Honor
20 would like to hear from the objectors.

21 THE COURT: I would. And I've also read the papers.

22 MR. HARVEY MILLER: Thank you, Your Honor. So I will
23 turn over to the objectors. I assume the creditors'
24 committee -- you may want to hear from them now or after.

25 THE COURT: Does the committee wish to wait or do you

1 want to jump on now?

2 MR. O'DONNELL: I think we can state our position now,
3 Your Honor. Your Honor, Dennis O'Donnell again from Milbank
4 for the official committee of unsecured creditors. We filed a
5 statement in support of this motion, Your Honor. As Mr. Miller
6 indicated, we worked closely with the debtors and in terms of
7 the whole avoidance action process. We intended to
8 (indiscernible) the order as modified (indiscernible) our right
9 to participate and to assure, essentially, that these actions
10 are prosecuted with all of the appropriate (indiscernible)
11 turns out to be the right action to take. We believe that of
12 all the objections are adequately addressed by the provision in
13 the order that permits a defendant to come to this Court for
14 good cause shown to seek relief. All of the objections are
15 variations on the theme of it's too long or we'll be
16 prejudiced. If, in fact, there is a long delay or if there is
17 prejudice to be shown, they can come to the Court and ask the
18 Court for a relief from the stay.

19 So for that reason, we believe that those objections
20 should be overruled and the stay granted as requested.

21 THE COURT: Okay. I guess I'll hear from the
22 objectors one at a time. I can't tell how many ways you're
23 here representing objecting parties but I'll take them in no
24 particular order. Whoever gets to the podium first.

25 (Pause)

1 MR. TOP: Good morning, Your Honor. Frank Top of
2 Chapman & Cutler representing U.S. Bank, National Association,
3 as the trustee in a lot of these things -- transactions. And
4 again, we filed papers in connection with this and
5 (indiscernible) to support (indiscernible). So I'm not going
6 to dwell too much on things that we've already said in our
7 papers. Just to point out that, really, the burden is upon
8 them to demonstrate the need for a stay. And I don't doubt the
9 fact that these are very, very complex transactions and there's
10 a lot of adversary proceedings and the like. Nonetheless, the
11 defendants in these also have rights that need to get these
12 proceedings moving as well.

13 THE COURT: Well, how are the defendants' rights
14 adversely affected by the stay when there's the ability for
15 caution to obtain relief?

16 MR. TOP: Well, because, first of all, to the extent
17 that a particular defendant is going to move the Court to do
18 so, it's going to be one particular defendant in what might be
19 a proceeding that has hundreds of defendants. I think one of
20 those -- one of the adversary proceedings names at least ninety
21 noteholders and eight or nine different trustees and the like.

22 The stay may actually have an impact on -- from a
23 practical perspective, in terms of identifying witnesses and
24 things like that, people change jobs and the like. It also may
25 have an affect on statutes of limitations. I'm not sure but to

1 the extent that that's a concern for some people particularly
2 where they have further distributed the money to somebody else,
3 I think that needs to be taken into consideration.

4 And that whole notion that we can come in and ask the
5 Court for some relief from the stay really puts the burden on
6 us, on the defendants, in order to show --

7 THE COURT: Absolutely.

8 MR. TOP: Yeah.

9 THE COURT: Absolutely.

10 MR. TOP: But that's not where the burden --

11 THE COURT: What's wrong with that?

12 MR. TOP: -- is under the law.

13 THE COURT: But what's wrong with that?

14 MR. TOP: Because the likelihood -- and I have no idea
15 how this will play out but it seems unlikely if only one
16 defendant is seeking relief from the stay that that would be
17 granted in the context of a much bigger case. It would be much
18 harder to show cause. I have no idea one way or the other.
19 But that -- again, that's putting the burden on us where if you
20 just put a limited amount of time on a particular stay and the
21 debtors need more time, they can file a paper, too, to say,
22 look, we're coming up on our six months or four months or
23 whatever the Court decides is an appropriate period of time.
24 They can come before the Court and say, look, we need some
25 additional time to do x, y or z.

1 THE COURT: So is your principle concern that the stay
2 as requested is indefinite in duration and what you're really
3 seeking is a time limited stay? Is that your issue?

4 MR. TOP: I think that's part of it. But I also think
5 their ability just to say the stay is off unilaterally is also
6 inappropriate and that it creates again a different leverage
7 point as we try to negotiate resolutions in all these
8 particular transactions. I think it ought to be a mutual stay.
9 And what I would suggest is forget about the stay but why not
10 put together a scheduling order with respect to these
11 transactions which takes into account all of the debtors'
12 needs. They can -- if they feel they need six months in order
13 to put together a list of all the defendants and serve papers
14 and things like that, that's certainly something that people
15 can talk about. But at least, if we have a scheduling order
16 that sets forth all the dates when things are going to be due,
17 when answers need to be submitted, when third party
18 defendants -- or when defendants can submit discovery and the
19 like to the debtors that's fair, that could all be put together
20 in some kind of a scheduling order that isn't necessarily
21 written in stone but at least that all parties in the
22 proceedings know exactly what to expect.

23 And so, with that, Your Honor, that's -- I'll leave it
24 to other objectors. Thank you.

25 THE COURT: Okay. Thank you.

1 MR. PIETRANTONIO: Good morning, Your Honor. Thomas
2 Pietrantonio on behalf of Interface Cable. The objection of
3 Interface Cable is geared more towards this indefiniteness of
4 the stay, the length of the stay, Your Honor. Our concern is
5 the preservation, the (indiscernible) and the preservation of
6 evidence. Two years plus have already gone by. We don't know
7 from the proposed order what the plans are for the -- when an
8 ADR type of format will be put in place, when the matters will
9 go forward, what access we'll have to relevant evidence. It's
10 really the indefiniteness of time as counsel just said.

11 THE COURT: Okay.

12 MR. PIETRANTONIO: Thank you, Your Honor.

13 MR. PEDONE: Good morning, Your Honor. Richard Pedone
14 on behalf of Deutsche Bank Trust Company America as indenture
15 trustee. We did not object to a stay entering but we do object
16 to the unlimited nature and duration of the stay as well as the
17 shifting of burdens. We would agree with a 120-day stay with
18 the parties either coming back by consent or the debtors
19 establishing cause for the stay to continue. That's what
20 Congress intended when they established the statute of
21 limitations. So again, it's an objection to the shifting of
22 the burdens and the indefinite timetable. Thank you.

23 THE COURT: You're saying this is an issue of
24 congressional intent?

25 MR. PEDONE: I believe when statutes of limitations

1 were established, Congress did have an intent that litigation
2 proceed not that it be stayed indefinitely.

3 THE COURT: Well, the litigation has commenced so the
4 statute's really not an issue.

5 MR. PEDONE: Not if it's stayed for all purposes, Your
6 Honor. I believe that's not the equivalent of actually
7 commencing --

8 THE COURT: Well, I read the -- proscribed by Weil
9 Gotshal in response to the objections and agree with the
10 position expressed by Weil Gotshal and (indiscernible) think
11 it's (indiscernible) attributed to that as well. The statute
12 as proposed has already served its purpose. Parties understand
13 now precisely the nature of the claims being asserted. And
14 you're on notice. You can preserve your evidence. You can do
15 whatever is necessary to protect yourself. The only thing
16 that's happening is a period during which everybody is
17 (indiscernible) including the defendants.

18 MR. PEDONE: Which is why we agree with the stay for a
19 definite period of time.

20 THE COURT: I'm simply (indiscernible) with your
21 notion this is somehow congressionally sanctioned.

22 MR. PEDONE: I accept that.

23 THE COURT: Your objection is not congressionally
24 sanctioned in my view.

25 MR. PEDONE: I respectfully restate my position, Your

1 Honor. Thank you.

2 THE COURT: Okay. Fine.

3 MR. DASH: Good morning, Your Honor. Andrew Dash,
4 Brown Rudnick, on behalf of Loreley Financing (Jersey) Nos. 8,
5 15 and 24 Limited. We join in the concern expressed by other
6 objecting counsel as to the indefinite nature of the proposed
7 stay and the unilateral ability of the debtors to declare the
8 stay lifted without any application notice to waive it. Your
9 Honor, it provides them with an advantage in a negotiation.

10 We also object --

11 THE COURT: What would you suggest would be the right
12 way for the stay to come to an end?

13 MR. DASH: Well, Your Honor, if the applicants -- if
14 the objectors are to be required -- if the defendants are to be
15 required to come to the court on cause shown, obtain a lifting
16 of the stay from Your Honor, the debtors should be obligated
17 to, on notice, explain why they think the stay should be lifted
18 and appear at a hearing and allow other parties to address that
19 issue at that time.

20 In addition, Your Honor, I would suggest that it may
21 be -- if Your Honor is inclined to grant the stay, it may be
22 appropriate under these circumstances to ask the debtors to
23 provide periodic reports on the status of their diligence, the
24 status of their negotiations efforts so that the defendants can
25 understand where the debtors are in their process rather than

1 waiting for some unknown time in the future to commence the
2 litigation. We would think a thirty or sixty-day interval
3 would be appropriate in that regard.

4 THE COURT: Okay.

5 MR. DASH: Thank you, Your Honor.

6 (Pause)

7 MR. SHULMAN: Good morning, Your Honor. Motty Shulman
8 of Boies Schiller & Flexner on behalf of BNP Paribas London
9 branch. Our objection is slightly different than all the other
10 objectors because our case is different. We're here as a
11 defendant. The debtor is a defendant in our matter. Unlike
12 all the other avoidance actions where the debtor came, filed
13 lawsuits on the eve of the statute of limitations, our lawsuit
14 was commenced about a month prior by the trustee of our
15 facility, of our bank. We remain as a defendant; the debtor
16 remains as a defendant. Subsequently, the debtor filed a
17 counterclaim naming the facility as a counter -- as an
18 interpleader defendant. This is not a situation where there's
19 nobody losing money, there's nobody being prejudiced because
20 the defendant has the money. The plaintiff simply needs a
21 little more time.

22 We have millions of dollars that are being tied up by
23 virtue of the pending litigation. The debtor comes in now and
24 says let's put this on an indefinite stay. Our money is being
25 tied up. We are prejudiced by the stay. In fact, the debtor

1 recognizes it's prejudice. In response to U.S. Bank's
2 objection, the debtor recognizes the distinction and in a reply
3 makes a distinction between a plaintiff seeking a stay which
4 the debtor says -- it cites law saying the Court should give
5 weight to it and a defendant who's coming in and seeking a
6 stay. The defendant who's coming in and seeking a stay or
7 objecting to a stay is giving less deference because there is
8 much less prejudice.

9 We object to the stay not so much in terms of the
10 limitations of the stay or the time or the other objections
11 that were raised by the other parties, but we are asking that
12 we simply be taken out from the list of Schedule A on the
13 actions that are subject to the stay because we are differently
14 situated.

15 THE COURT: Let me ask you this. My understanding of
16 the stay that's being proposed here is that it's not everybody
17 standing around with their hands in their pockets. It's people
18 simply not litigating but being permitted to engage in
19 consensual resolutions if those are possible.

20 he adversary docket in these cases was an extensive
21 docket even before the fifty-eight cases were commenced last
22 month. And many of those cases have been pending for very long
23 periods of time at no fault of the Court and no fault of the
24 parties. It's just the nature of litigation as you know.
25 You're not getting as many (indiscernible) anyway. How are you

1 really prejudiced?

2 MR. SHULMAN: Well --

3 THE COURT: Because the only you get the money quickly
4 is if you reach some kind of an agreement that resolves the
5 interpleader because parties are acting like matured bond
6 notes.

7 MR. SHULMAN: This is not a situation where there has
8 been a lawsuit filed and now we need to take a stay and pause
9 simply to engage in settlement negotiations. Before the
10 lawsuit was filed, the parties engaged in settlement
11 negotiations. Those settlement negotiations apparently were
12 unsuccessful. But --

13 THE COURT: Maybe it's time for ADR?

14 MR. SHULMAN: We proposed to the debtor that we take a
15 sixty-day stay for ADR. We have the same stipulation with
16 regard to an overcollateralization of escrow. We did propose
17 that. The debtor has rejected that. We're amenable to
18 settlement negotiations. What we are objecting to is the
19 debtor, who is a defendant over here, simply hijacking the
20 litigation to the plaintiff is giving the right to litigate in
21 the matter that they choose. And it's different than all the
22 other fifty-seven avoidance actions that the debtor has filed.
23 All the other fifty-seven actions are actions where the debtor
24 comes in and filed a lawsuit. The defendant still has the
25 money. We don't have the money. We're a defendant over here.